



CITY OF  
**HAYWARD**  
HEART OF THE BAY

**MEMORANDUM**

**DATE:** May 19, 2015  
**TO:** City Council  
**FROM:** Alex Ameri   
Director of Utilities & Environmental Services  
**SUBJECT:** Bid Protest by Western Water -  
Conversion of Existing Gravity Thickener to New Primary Clarifier at Water  
Pollution Control Facility: Award of Contract and Appropriation of Funds

Staff has reviewed the recent letter from Western Water dated May 11, 2015 received after the agenda package was finalized for the May 19, 2015 City Council meeting. After review of the additional information provided by Western Water in regards to Mountain Cascade's bid, staff's recommendation remains the same and has concluded that the issues raised by Western Water are inconsequential and not material for the following reasons:

- (1) Crack Injection Repair – The work is to be done by a second-tier sub-contractor. Second tier sub-contractors need not be listed on the bid sheet. The Public Contract Code only requires listing of sub-contractors who directly contract with the prime/general contractor. Therefore, Mountain Cascade's failure to list a sub-contractor for this item is not a violation of the Public Contract Code. Mountain Cascade will be required to have the material furnished and the work performed in accordance with warranty, certifications, and all other requirements noted in the contract specifications.
- (2) Multiple Sub-contractors Listings – Mountain Cascade's bid form indicated two Electrical Subcontractors one of whom was crossed-out prior to bid submission. Last minute changes to bid sheets prior to submission to the City Clerk are not uncommon. Since Mountain Cascade properly crossed out one of the proposed electrical subcontractor's prior to bid submission, there is no violation of the Public Contract Code's prohibition on listing multiple sub-contractors for the same item of work.
- (3) Engineered Metal Building – The project specifications do not require the building to be erected on site. Mountain Cascade proposes to have the building fabricated off-site and set into place by Mountain Cascade's own work force; therefore the building is being furnished by a material supplier, and not constructed on site by a subcontractor. The Public Contract Code does not require material suppliers to be listed in the bid form. Mountain Cascade's proposal to supply the building in this fashion meets the requirements of the bid specifications.

The issues raised by Western Water do not constitute violations of the applicable provisions of the Public Contract Code. In determining that Mountain Cascade is the lowest responsible and responsive bidder the City has not taken any actions that would give the low bidder an advantage or benefit not allowed to other bidders. Furthermore, Mountain Cascade's bid is responsive to the bid specifications. Therefore, staff recommends that Council reject Western Water's bid protest, and award the contract to the low bidder, Mountain Cascade.

CC: City Manager  
City Attorney